

JUL 24 2006

Application No.: 10/726,968

Case No.: 59418US002

REMARKS

Claims 1 to 17 remain pending. Reconsideration of this application is respectfully requested in view of the remarks that follow.

Provisional Obviousness-Type Double Patenting Rejections

Various claims of the present application were provisionally rejected over various claims of the following copending and commonly assigned applications, under the judicially-created doctrine of obviousness-type double patenting:

U.S. Application 10/726,995 (Attorney Docket No. 59415US002);

U.S. Application 10/727,026 (Attorney Docket No. 59417US002); and

U.S. Application 10/727,072 (Attorney Docket No. 59416US002).

In response thereto, Applicants note that after consideration of the arguments that follow, these provisional ODP rejections will be the only rejections remaining in this application. As such, they should be withdrawn in view of the practice outlined in MPEP § 804 (I)(B). The applications listed above have not been granted any notice of allowance as of the date of this writing.

§ 103 Rejections

The Office Action rejected claims 1,2,4-9, and 15-17 as obvious (35 USC § 103(a)) over U.S. Patent 6,155,699 (Miller et al.) in view of U.S. Patent 6,172,810 (Fleming et al.) and in view of U.S. Patent 5,552,927 (Wheatly et al.). According to the Office Action, it would have been obvious to substitute the flexible polymeric multilayer reflector of Fleming et al. for the reflector of Miller et al and that Wheatly et al describes polymers that resist degradation when exposed to UV light.

The Office Action also rejected claims 10-14 as obvious (35 USC § 103(a)) over Miller et al. in view of Fleming et al., in view of Wheatly et al. and further in view of U.S. Patent 6,653,765 (Levinson et al.), alleging that Levinson et al. discloses a layer of phosphor material being a plurality of dots of phosphor material.

Application No.: 10/726,968

Case No.: 59418US002

The Office Action also rejected claim 3 as obvious (35 USC § 103(a)) over Miller et al. in view of Fleming et al., in view of Wheatly et al. and further in view of the printed publication "Giant Birefringent Optics in Multilayer Polymer Mirrors" (Weber et al.), stating that Weber et al. discloses the use of birefringent layers within a multilayer polymer mirror.

In reply, Applicants focus for purposes of this response on the combination of references involving Miller et al., Fleming et al., and Wheatly et al. Applicants respectfully submit that a rejection of the claims cannot be sustained because the proposed combination lacks the required "motivation to combine" (see MPEP 2143.01(V)), and further, Fleming et al. is non-analogous art.

The Office Action states that: "[i]t would have been obvious ...to substitute the reflector of Fleming for that of Miller because it reduces the cost of the reflector when higher refractive indices are unnecessary". Applicants disagree.

The cited references do not disclose or suggest that reflectors with higher refractive indices cost more than reflectors with lower refractive indices. Nor would one of ordinary skill in the art understand that reflectors with higher refractive indices always cost more than reflectors with lower refractive indices. Fleming et al., apparently asserts that the design of a reflector includes not only the material selection of the layers but the number of layers, which can also be dependent on the refractive index difference between the layers and the amount of reflection and the bandwidth of reflection desired. All of these reflector design parameters may contribute to the total cost of the reflector, along with many other factors, such as volumes, capital equipment costs, and so on. Thus, Applicants disagree with the Examiner's assertion that polymeric multilayer reflectors taught in Fleming et al. would necessarily have a lower cost than the multilayer reflectors of Miller et al.

The remaining cited references fail to disclose or suggest a "motivation to combine" and thus do not remedy the deficiencies found in Miller et al. and Fleming et al. In view of the foregoing, the claims rejected over Miller et al. in view of Fleming et al. are submitted to be allowable.

Applicants also note that Fleming et al. is non-analogous art. For purposes of evaluating the obviousness of claimed subject matter, one must make certain that a particular reference relied upon constitutes "analogous art". See MPEP§2141.01(a)(1). In order to rely on a

Application No.: 10/726,968

Case No.: 59418US002

reference as a basis for rejection, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. See *id.*

The Fleming et al. reference is not in the field of applicant's endeavor. Fleming et al. is directed to retroreflective articles that have the ability to redirect incident light back towards a light source, such as road signs, barricades, license plates, safety vests, jogger's shoes, and canvas-sided trucks. See col. 1, lines 10-20. Applicants field of endeavor is phosphor light emitting diode light sources. Retroreflective articles and phosphor light emitting diode light sources are not the same field of endeavor. One of skill in the phosphor light emitting diode light source art would not come across a retroreflective reference when trying to solve a phosphor light emitting diode light source problem. Thus, the Fleming et al. reference is not in the field of applicant's endeavor.

The Fleming et al. reference is not reasonably pertinent to the particular problem with which the inventors were concerned. The inventors were concerned with, *inter alia*, improving the operation of phosphor light emitting diode light sources. Retroreflective articles do not have the same problems that are associated with phosphor light emitting diodes. For example, selecting reflector materials that can withstand the energy flux of both the LED and the phosphor layer and the elevated operating temperatures of a phosphor light emitting diode are not problems encountered with retroreflective road signs, barricades, license plates, safety vests, jogger's shoes, and canvas-sided trucks, all found in ambient environmental conditions. Thus, one would not be reasonably expected or motivated to look to retroreflective article art for improving phosphor light emitting diodes. In view of the foregoing, the claims (1-17) rejected over Fleming et al. are submitted to be allowable since Fleming is non-analogous art.

The rejections of the claims having been overcome, Applicants respectfully submit that all pending claims 1-17 are in condition for allowance.

Application No.: 10/726,968

Case No.: 59418US002

CONCLUSION

In view of the foregoing, it is submitted that the application is in condition for allowance, the early indication of which is earnestly solicited.

Other than the fee for the 1-month extension under Rule 136(a), no other fee is believed to be due by submission of this paper. If this belief is incorrect, please charge any additional required fee to Deposit Account No. 13-3723.

Respectfully submitted,

24 July 2006
Date

By: Stephen C. Jensen
Stephen C. Jensen, Reg. No.: 35,207
Telephone No.: 651-736-3369

Office of Intellectual Property Counsel
3M Innovative Properties Company
Facsimile No.: 651-736-3833